

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

**VALENCIA GARY, Administrator
of the Estate of Jerry Butts,**

Plaintiff

v.

SHERIFF JERRY MODENA, et al.,

Defendants

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5:03-CV-337 (WDO)

ORDER

This case was brought by Plaintiff after Jerry Butts, her father, died while incarcerated at the Bibb County Law Enforcement Center. Plaintiff alleged, among other claims, an unconstitutional deliberate indifference to Mr. Butts’ medical needs. This Court granted summary judgment to Defendants finding that Plaintiff failed to show a constitutional deprivation, and Plaintiff appealed. The Eleventh Circuit Court of Appeals vacated in part and affirmed in part remanding for trial the issue of liability regarding the four officers and two nurses on duty during the time Mr. Butts was incarcerated. Specifically, the court of appeals held that there were material issues of fact in dispute regarding whether the actions of these six defendants showed a deliberate indifference to Butts’ medical needs, thus it could not be determined if a constitutional violation had occurred.

The matter is now before the Court on Defendants’ “renewed” motion for summary judgment. Defendants contend that this Court and the court of appeals did not rule on the

issue of whether the officers were entitled to qualified immunity and thus the issue needs to be addressed before the case can proceed to trial. The fatal flaw with Defendants' argument is that the court of appeals, in the last sentence of the majority opinion, specifically remanded the claims against the remaining 6 defendants FOR TRIAL. Defendants set forth arguments that are more appropriately made before the Supreme Court in a petition for review of the court of appeals' decision. Because this Court is bound by the court of appeals' remand decision and the findings therein, Defendants' renewed motion for summary judgment is DENIED.

SO ORDERED this 19th day of April, 2007.

**S/
WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE**